

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ACTIVISION BLIZZARD, INC.; ELECTRONIC ARTS INC.; TAKE-TWO
INTERACTIVE SOFTWARE, INC.; 2K SPORTS, INC.; AND ROCKSTAR
GAMES, INC.
Petitioners

v.

ACCELERATION BAY LLC
Patent Owner

Case: IPR2016-00747
U.S. Patent No. 6,732,147

**PETITIONERS' MOTION TO FILE DOCUMENTS UNDER SEAL
PURSUANT TO 37 C.F.R. §§ 42.14 & 42.54**

Mail Stop PATENT BOARD
Patent Trial and Appeal Board
United States Patent and Trademark Office
PO Box 1450
Alexandria, Virginia 22313-1450
Submitted Electronically via the Patent Review Processing System

I. FULL STATEMENT OF RELIEF REQUESTED (37 C.F.R. § 42.22(A)(1) & (A)(2))

Pursuant to 37 C.F.R. §§ 42.14 and 42.54, Petitioner Activision Blizzard, Inc., Electronic Arts Inc., Take-Two Interactive Software, Inc., 2K Sports, Inc., and Rockstar Games, Inc. (“Petitioner”) respectfully submits this Motion to Seal (“Motion”) portions of Petitioner’s Reply to Patent Owner’s Response (“Petitioner’s Reply”) and Exhibits 1201 and 1207 (“Reply Exhibits”), which are being filed concurrently herewith.

Petitioner is filing the present motion to seal due to Patent Owner Acceleration Bay, LLC’s indiscriminate designation of the entire deposition transcripts of certain witnesses as confidential under the Protective Order.

In this proceeding, Patent Owner served on Petitioner its Patent Owner Response (Paper 24) and Exhibits 2003-2004, 2006-2014, 2016, and 2020-2037. Patent Owner filed the Patent Owner Response and Exhibits 2004, 2006, 2008, and 2009 under seal contemporaneously with its Motion for Entry of the Default Protective Order and to Seal Certain Exhibits Under 37 C.F.R. §§ 42.14 and 42.54 (Paper 26, “Motion to Seal”). Patent Owner also filed redacted copies of the Patent Owner Response and Exhibits 2004, 2006, 2008, and 2009. Petitioner did not oppose entry of the Board’s Default Protective Order. *See* Paper 26, p.6. The

Board has not yet ruled on the Motion to Seal, and the documents are provisionally sealed pending the Board's decision. 35 U.S.C. § 316(a)(1); 37 C.F.R. § 42.14.

Petitioner sought to meet and confer with Patent Owner regarding the confidentiality designation of deposition transcripts on February 22, 2017. Ex. 1207, 233:17-248:15. After the deposition of Dr. Goodrich, Patent Owner designated the entirety of Dr. Goodrich's transcript as "Protective Order Material." *Id.*, 233:17-19. Petitioner objected to the designation and asked what the basis for the designation. *Id.* The only thing that Patent Owner could point to as being confidential was Exhibit 2004, which was not part of the transcript, and had already been filed under seal. *Id.* Moreover, Patent Owner refused to say that even a single word of Dr. Goodrich's testimony was confidential. *Id.* Therefore, Petitioner sought to meet and confer with Patent Owner regarding the over-designation of Dr. Goodrich's transcript as well as the transcripts of Dr. Bims and Mr. Bourassa. *Id.* Patent Owner refused to do so. *Id.* Then, Petitioner requested Patent Owner to provide a certain date and time to call the Board to resolve the issue. *Id.* Patent Owner refused to do this as well. *Id.*

Petitioner followed up on its request two days later by email, on February 24, 2017. Ex. 1208. In this email, Petitioner requested that Patent Owner either remove the confidentiality designations or specify which portions were confidential to avoid unnecessary sealed filings in this IPR proceeding. *Id.* Patent

Owner did not respond. *Id.* Petitioner also followed up on February 27 and 28.

Id. On February 28, Patent Owner refused Petitioner's request, stating:

In light of the upcoming deadlines, the entirety of each of the deposition transcripts should be filed under seal. To the extent necessary, we will file redacted versions at the appropriate time and after we have had an adequate opportunity to review the various transcripts in full.

Id. Since that time, counsel have not been able to speak with one another by phone regarding this matter.

Portions of Petitioner's Reply and the Reply Exhibits—which are being filed concurrently with this Motion—cite to Patent Owner's Response, exhibits, and transcripts that Patent Owner alleges contain “highly confidential information.” Paper 26, pp.1-4. Accordingly, Petitioner moves to file under seal portions of Petitioner's Reply and the Reply Exhibits (Exs. 1201 and 1207), which contain the purportedly “highly confidential information,” at least until the Board rules on PO's Motion to Seal. If the Board denies the Motion to Seal in whole or in part, Petitioner would adjust its request to seal Petitioner's Reply and the Reply Exhibits accordingly. Petitioner did not oppose entry of the Board's Default Protective Order, and agreed to be bound by the terms of the Board's Default Protective Order, which was attached as Exhibit A to Paper 26. *See* Paper 26, p.6 and Ex. A.

II. GOOD CAUSE EXISTS FOR SEALING CERTAIN CONFIDENTIAL INFORMATION

Good cause for sealing portions of Petitioner's Reply and the Reply Exhibits (Exs. 1201 and 1207) exists insofar as Patent Owner maintains that each of these exhibits include sensitive information warranting designation under the Board's Default Protective Order (though Petitioner does not universally agree with Patent Owner's characterizations).

III. CERTIFICATION OF CONFERENCE (37 C.F.R. § 42.54)

As discussed above, Petitioner and Patent Owner previously conferred regarding the Motion to Seal. Petitioner did not oppose Patent Owner's request for entry of the Default Protective Order. *See* Paper 26, p.6. In addition, pursuant to 37 C.F.R. §42.54(a), Petitioner hereby certifies that it has conferred with Patent Owner in good faith. As indicated above, Patent Owner has requested copies of the materials Petitioner intend to seal. Patent Owner has indicated that it will furnish the Board with redacted versions of these documents should it be required to do so.

Respectfully submitted,

Dated: March 7, 2017

/Michael M. Murray/

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. §§ 42.6(e) and 42.105(a), this is to certify that on March 7, 2017, I caused to be served a true and correct copy of the foregoing **“PETITIONER’S MOTION TO FILE DOCUMENTS UNDER SEAL PURSUANT TO 37 C.F.R. §§ 42.14 & 42.54”** was served by electronic mail upon the following counsel for Patent Owner:

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